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10 Attorney for Defendants,  
11 GUILLERMO BENITEZ; and ELIZABETH BENITEZ  
12 GARCIA, dba SAN YSIDRO AUTO SALES

FILED

08 JUL 11 PM 2:51

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *EC* DEPUTY

13 UNITED STATES DISTRICT COURT  
14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 NONI GOTTI,  
16 Plaintiff,

17 v.

18 GUILLERMO BENITEZ; ELIZABETH BENITEZ  
19 GARCIA DBA SAN YSIDRO AUTO SALES; and  
20 DOES 1 THROUGH 10, Inclusive,  
21 Defendants.

Case No. **08 CV 1245 J POR**  
NOTICE OF REMOVAL OF ACTION

22 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
23 SOUTHERN DISTRICT OF CALIFORNIA:

24 PLEASE TAKE NOTICE that Defendants GUILLERMO BENITEZ and ELIZABETH  
25 BENITEZ GARCIA dba SAN YSIDRO AUTO SALES hereby remove to this Court the State  
26 Court action described below.

27 1. On May 20, 2008, an action was commenced against Defendants GUILLERMO  
28 BENITEZ; ELIZABETH BENITEZ GARCIA, dba SAN YSIDRO AUTO SALES; and DOES 1  
THROUGH 10, Inclusive, in the San Diego County Superior Court, South County Division,  
bearing case number 37-2008-00070661-CU-CR-SC, and captioned NONI GOTTI, Plaintiff, v.  
GUILLERMO BENITEZ; ELIZABETH BENITEZ GARCIA, dba SAN YSIDRO AUTO  
SALES; and DOES 1 THROUGH 10, Inclusive.

*CR*

2. On June 11, 2008, service of the summons and complaint was made on Defendant ELIZABETH BENITEZ GARCIA, dba SAN YSIDRO AUTO SALES, true and correct copies of which are attached hereto as Exhibit A and incorporated by reference. On information and belief, Defendant GUILLERMO BENITEZ has not yet been served. No further proceedings have been had in the state court action.

3. The above-described action is a civil action of which the District Court has original jurisdiction under the provisions of 42 United States Code section 12101, et seq. (The Americans With Disabilities Act), and is one that may be removed to the United States District Court by Defendants pursuant to 28 United States Code section 1441, according to the following facts: It appears from the face of Plaintiff NONI GOTTI's complaint that the civil action arises under the Americans With Disabilities Act, 42 United States Code sections 12182 and 12183, by virtue of alleged discriminatory actions in public accommodations by Defendants, to wit, facilities owned by Defendants are alleged to have impaired or hindered access.

WHEREFORE, Defendants pray that the above action now pending in the Superior Court of California, County of San Diego, South County Division, be removed therefrom to this United States District Court.

DATED: July 11, 2008

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

By: 

Spencer C. Skeen (Bar No. 182216)  
B. Allison Borkenheim (Bar No. 230318)  
Marsha Amin (Bar No. 238820)  
Attorneys for Defendants, GUILLERMO  
BENITEZ; and ELIZABETH BENITEZ  
GARCIA, dba SAN YSIDRO AUTO  
SALES



SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

GUILLERMO BENITEZ; ELIZABETH BENITEZ GARCIA DBA SAN YSIDRO  
AUTO SALES; and DOES 1 THROUGH 10, Inclusive

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTA DEMANDANDO EL DEMANDANTE):

NONI GOTTI

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)FILED  
SAN DIEGO SUPERIOR COURT

MAY 21 2008

CLERK OF THE SUPERIOR COURT  
BY: J. METRAS

You have **30 CALENDAR DAYS** after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is: San Diego Superior Court  
(El nombre y dirección de la corte es):

CASE NUMBER **37-2008-00070661-CU-CR-SC**  
(Número del Caso)

South County Regional Center  
500 3rd Avenue, Chula Vista, California 91910

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Theodore A. Pinnock, Esq. Bar #: 153434; David C. Wakefield, Esq. Bar #: 185736; Michelle Wakefield, Esq. Bar #: 200424  
3033 Fifth Avenue, Suite 410 San Diego, CA 92103

J. Metras

DATE: **MAY 21 2008**  
(Fecha)Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☒ by personal delivery on (date): **6-11-08**

(SEAL)

Page 1 of 1

FILED

SOUTH COUNTY

08 MAY 20 PM 4:04

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**PINNOCK & WAKEFIELD**

A Professional Corporation

Theodore A. Pinnock, Esq.

Bar #: 153434

David C. Wakefield, Esq.

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3033 Fifth Avenue, Suite 410

San Diego, CA 92103

Telephone: 619.858.3671

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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

**NONI GOTTI,**

**Case No. 37-2008-00070661-CU-CR-SC**

**Plaintiff,**

**CIVIL COMPLAINT:**

**DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS**

**[42 U.S.C. 12182(a) ET. SEQ; CIVIL  
CODE 51, 52, 54, 54.1, 54.3]**

**v.**

**GUILLERMO BENITEZ;  
ELIZABETH BENITEZ GARCIA DBA  
SAN YSIDRO AUTO SALES; And  
DOES 1 THROUGH 10, Inclusive**

**UNLIMITED CIVIL CASE -  
PERMANENT INJUNCTIVE RELIEF**

**Defendants.**

**NAMED DEFENDANTS AND NAMED PLAINTIFF**

1. Plaintiff is informed, believes and thereon alleges that Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Plaintiff is informed and believes and thereon alleges that Defendants GUILLERMO BENITEZ; ELIZABETH BENITEZ GARCIA DBA SAN YSIDRO AUTO SALES are the owner, operator, and/or lessor/lessee of the real property and the public accommodation located thereon at the Property Address: 165-71 SAN YSIDRO BLVD W, SAN YSIDRO, CA 92173-2555; Assessor's Parcel Number: 666-030-08. Defendant GUILLERMO BENITEZ is located at 209 COTTONWOOD RD, SAN YSIDRO, CA

1 92173. Defendant ELIZABETH BENITEZ GARCIA DBA SAN YSIDRO AUTO SALES is  
2 located at 171 SAN YSIDRO BLVD W, SAN YSIDRO, CA 92173.

3 2. The words Plaintiff and Plaintiffs as used herein specifically include NONI GOTTL.

4 3. Defendants Does 1 through 10, were at all times relevant herein subsidiaries, employers,  
5 employees, agents, of Defendants GUILLERMO BENITEZ; ELIZABETH BENITEZ GARCIA  
6 DBA SAN YSIDRO AUTO SALES. Plaintiff is ignorant of the true names and capacities of  
7 Defendants sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by  
8 such fictitious names. Plaintiff will pray leave of the court to amend this complaint to allege the  
9 true names and capacities of the Does when ascertained.

10 4. Plaintiff is informed and believes, and thereon alleges, that Defendants and each of them  
11 herein were, at all times relevant to the action, the owner, lessor, lessee, franchiser, franchisee,  
12 general partner, limited partner, agent, employee, representing partner, or joint venturer of the  
13 remaining Defendants and were acting within the course and scope of that relationship. Plaintiff  
14 is further informed and believe, and thereon allege, that each of the Defendants herein gave  
15 consent to, ratified, and/or authorized the acts alleged herein to each of the remaining Defendants.

#### 16 CONCISE SET OF FACTS

17 5. Plaintiff NONI GOTTL (hereinafter "Plaintiff") has physical and mental impairments and  
18 due to these impairments she has successfully learned to walk with a service animal. Plaintiff  
19 said physical and mental impairments substantially limit one or more of the following major life  
20 activities including but not limited to: walking and clinical depression. Plaintiff has a long  
21 history of mental impairments. Plaintiff's doctor required her to travel with a service dog as a  
22 non-medicated treatment for her conditions. Defendants refused Plaintiff entrance due to the dog  
23 or have a policy prohibiting service dogs.

24 6. Plaintiff has physical and mental impairments because their conditions affect one or more  
25 of the following body systems: neurological, musculoskeletal, special sense organs, and/or  
26 cardiovascular. Further, Plaintiff said physical impairments substantially limits one or more of  
27 the following major life activities. In addition, Plaintiff cannot perform one or more of the said  
28

1 major life activities in the manner, speed, and duration when compared to the average person.  
2 Moreover, Plaintiff has a history of or has been classified as having a physical impairment as  
3 required by 42 U.S.C. § 12102(2)(A).

4 7. On May 18, 2008, Plaintiff NONI GOTTI desired to visit Defendants' public  
5 accommodation facilities located at Property Address: 165-71 SAN YSIDRO BLVD W, SAN  
6 YSIDRO, CA 92173-2555; Assessor's Parcel Number: 666-030-08 to utilize their goods and/or  
7 services. When Plaintiff NONI GOTTI desired to patronize Defendants' public accommodation  
8 facilities, she was unable to use and/or had difficulty using the public accommodations' facilities  
9 including but not limited to the barriers to access listed herein and said facilities were not  
10 accessible because they failed to comply with ADA Access Guidelines For Buildings and  
11 Facilities (hereafter referred to as "ADAAG" and codified in 28 C.F.R. Part 36, App. A) and/or  
12 California's Title 24 Building Code Requirements. Defendants failed to remove barriers to equal  
13 access within their public accommodation facilities as required.

14 8. Plaintiff NONI GOTTI personally experienced difficulty with said access barriers as listed  
15 herein to the present Complaint at Defendants' public accommodation facilities located on the  
16 Property and/or has knowledge of said access barriers and is presently deterred from accessing  
17 the public accommodation. Plaintiff alleges that these known barriers to access are not an  
18 exhaustive list of the barriers to access that exist at Defendants' facilities.

19 9. Defendants failed to provide auxiliary aids and services that are necessary to ensure equal  
20 access to the goods, services, privileges, or accommodations that it offers. Title 28, part 36.303  
21 of Code of Federal Regulations states:

22 (a) General. A public accommodation shall take those steps that may be necessary to ensure that  
23 no individual with a disability is excluded, denied services, segregated or otherwise treated  
24 differently than other individuals because of the absence of auxiliary aids and services, unless the  
25 public accommodation can demonstrate that taking those steps would fundamentally alter the  
26 nature of the goods, services, facilities, privileges, advantages, or accommodations being offered  
27 or would result in an undue burden, i.e., significant difficulty or expense.  
28



1 (b) Examples. The term "auxiliary aids and services" includes:

2 (1) Qualified interpreters, notetakers, computer-aided transcription services, written  
3 materials, telephone handset amplifiers, assistive listening devices, assistive listening  
4 systems, telephones compatible with hearing aids, closed caption decoders, open and  
5 closed captioning, telecommunications devices for deaf persons (TDD's), videotext  
6 displays, or other effective methods of making aurally delivered materials available to  
7 individuals with hearing impairments;

8 (2) Qualified readers, taped texts, audio recordings, Brailled materials, large print  
9 materials, or other effective methods of making visually delivered materials available to  
10 individuals with visual impairments;

11 (3) Acquisition or modification of equipment or devices; and

12 (4) Other similar services and actions.

13 (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids  
14 and services where necessary to ensure effective communication with individuals with  
15 disabilities.

16  
17 10. Plaintiff can prove these barriers as Plaintiff conducted a preliminary survey of  
18 Defendants' facility. Plaintiff specifically alleges that Defendants knew, to a substantial  
19 certainty, that the architectural barriers precluded equal access. First, Plaintiff will prove that  
20 Defendants had actual knowledge that the architectural barriers precluded equal access and that  
21 the noncompliance with ADAAG as to accessible entrances was intentional. Second, due to the  
22 abundance of ADA information and constant news covers of ADA lawsuits, Defendants had  
23 actual knowledge of the ADA and decided deliberately not to remove architectural barriers.  
24 Third, Defendants have no plans to remodel. Fourth, Defendants had actual knowledge of ADA  
25 given all the ADA public awareness campaigns, the abundance of free ADA information and the  
26 media's constant ADA coverage. Fifth, a human being acting for the defendants made a  
27 conscious decision as to how to proceed given the presence of the architectural barriers. Plaintiff  
28 alleges any alternative methods preclude integration of disabled patrons, as it requires them to use



1 second-class facilities. Also, expert testimony will show the facility contained inaccessible  
2 features. Plaintiff alleges businesses often state that they have few customers with disabilities.  
3 Plaintiff alleges such customers avoid patronizing inaccessible businesses and are deterred from  
4 patronizing such businesses.

5 11. The Plaintiff went to the property 171 SAN YSIDRO BLVD W, SAN YSIDRO. The  
6 property has no International Symbol of Accessibility signage. Also, there's no ramp leading to  
7 the office and the steps lack the slip resistance surface.

8 12. Plaintiff intends to return to Defendants' public accommodation facilities in the immediate  
9 future. Plaintiff was deterred and is presently deterred from returning due to her knowledge of  
10 the barriers to access that exist at Defendants' facilities.

11 13. Pursuant to federal and state law, Defendants are required to remove barriers to their  
12 existing facilities. Further, Defendants had actual knowledge of their barrier removal duties  
13 under the Americans with Disabilities Act and the Civil Code before January 26, 1992. Also,  
14 Defendants should have known that individuals with disabilities are not required to give notice to  
15 a governmental agency before filing suit alleging Defendants failed to remove architectural  
16 barriers.

17 14. Plaintiff believes and herein alleges Defendants' facilities have access violations not  
18 directly experienced by Plaintiff which would preclude or limit access by Plaintiff potentially  
19 including but not limited to violations of the ADA, ADA Accessibility Guidelines (Codified in 28  
20 C.F.R. Part 36, App. A) and Title 24 of the California Building Code. Plaintiff alleges  
21 Defendants are required to utilize the ADA checklist for Readily Achievable Barrier Removal  
22 approved by the United States Department of Justice and created by Adaptive Environments.  
23 Plaintiff is entitled to injunctive relief to remove all barriers to access that are related to her  
24 disability even those barriers that are only known to exist but are not directly experienced by  
25 plaintiff. *Doran v 7-Eleven Inc*, 2007 U.S.App.Lexis 26143 (9<sup>th</sup> Cir 2007).

26 15. Based on these facts, Plaintiff alleges she was discriminated against each time he  
27 patronized and/or was deterred from patronizing Defendants' facilities. Plaintiff was extremely  
28

upset due to Defendants' conduct.

16. Plaintiff is not required to provide notice to the defendants prior to filing a complaint and/or to recover attorney fees and costs. *Botosan v. Paul McNally Realty*, 216 F.3d 827, 832 (9<sup>th</sup> Cir 2000). *Skaff v Meridien*, 2007 U.S. App. LEXIS 25516 (9<sup>th</sup> Cir 2007).

### **WHAT CLAIMS ARE PLAINTIFF ALLEGING AGAINST EACH NAMED**

#### **DEFENDANT**

17. Defendants GUILLERMO BENITEZ; ELIZABETH BENITEZ GARCIA DBA SAN YSIDRO AUTO SALES and Does 1 through 10 will be referred to collectively hereinafter as "Defendants."

18. Plaintiff avers that the Defendants are liable for the following claims as alleged below:

#### **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

#### **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The Americans With Disabilities Act Of 1990**

##### **Claim I**

19. Based on the facts stated above, Defendants discriminated against Plaintiff on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation as Defendants own, lease (or lease to), or operate a place of public accommodation in violation of 42 U.S.C. §12182.

##### **Claim II**

20. Based on the facts stated above, Defendants discriminated against Plaintiff directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity in violation of 42 U.S.C. §12182.

##### **Claim III**

21. Based on the facts stated above, Defendants discriminated against Plaintiff as it is discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other

1 arrangements with the opportunity to participate in or benefit from a good, service, facility,  
2 privilege, advantage, or accommodation that is not equal to that afforded to other individuals in  
3 violation of 42 U.S.C. §12182.

4 Claim IV

5 22. Based on the facts stated above, Defendants discriminated against Plaintiff as it is  
6 discriminatory to provide an individual or class of individuals, on the basis of a disability or  
7 disabilities of such individual or class, directly, or through contractual, licensing, or other  
8 arrangements with a good, service, facility, privilege, advantage, or accommodation that is  
9 different or separate from that provided to other individuals.

10 Claim V

11 23. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants  
12 failed to afford to an individual with a disability in the most integrated setting appropriate to  
13 the needs of the individual in violation of 42 U.S.C. §12182.

14 Claim VI

15 24. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants  
16 utilized standards or criteria or methods of administration that have the effect of discriminating on  
17 the basis of disability; or that perpetuate the discrimination of others who are subject to common  
18 administrative control in violation of 42 U.S.C. §12182.

19 Claim VII

20 25. Based on the facts stated above, Defendants discriminated against Plaintiff as it is  
21 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,  
22 advantages, accommodations, or other opportunities to an individual or entity because of the  
23 known disability of an individual with whom the individual or entity is known to have a  
24 relationship or association in violation of 42 U.S.C. §12182. See *Niece v. Fitzner* 922 F. Supp.  
25 1208 (1996)

26 Claim VIII

27 26. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants  
28

1 engaged in the specific prohibitions as stated in 42 U.S.C. §12182.

2 Claim IX

3 27. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendant  
4 failed to demonstrate that the removal of a barrier is not readily achievable, and made such goods,  
5 services, facilities, privileges, advantages, or accommodations available through alternative  
6 methods in a segregated manner in violation of 42 U.S.C. §12182. Plaintiff is entitled to  
7 injunctive relief to remove all barriers to access that are related to his disability even those  
8 barriers that are only known to exist but are not directly experienced by plaintiff. *Doran v 7-*  
9 *Eleven Inc*, 2007 U.S.App.Lexis 26143 (9<sup>th</sup> Cir 2007).

10 Claim X

11 28. Based on the facts stated above, Defendants discriminated against Plaintiff as Defendants  
12 altered the use of their establishment in a manner that affected or could have affected the usability  
13 of the facility or part thereof and failed to make alterations in such a manner that, to the maximum  
14 extent feasible, the altered portions of the facility are readily accessible to and usable by  
15 individuals with disabilities in violation of 42 U.S.C. §12183.

16 29. WHEREFORE, Plaintiff pray for judgment and relief as hereinafter set forth.

17  
18 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - **CLAIMS UNDER**  
19 **CALIFORNIA ACCESSIBILITY LAWS**

20 CLAIM I: **Denial Of Full And Equal Access**

21 30. Based on the facts plead above and elsewhere in this complaint, Plaintiff was denied full  
22 and equal access to Defendants' goods, services, facilities, privileges, advantages, or  
23 accommodations within a public accommodation owned, leased, and/or operated by Defendants  
24 as required by Civil Code Sections 54 and 54.1.

25 CLAIM II: **Failure To Modify Practices, Policies And Procedures**

26 31. Based on the facts plead above and elsewhere herein this complaint, Defendants failed and  
27 refused to provide a reasonable alternative by modifying its practices, policies, and procedures in  
28 that they failed to have a scheme, plan, or design to assist Plaintiff and/or others similarly situated

1 in entering and utilizing Defendants' services as required by Civil Code § 54.1. Thus, Plaintiff  
2 was subjected to discrimination in violation of Civil Code § 54.1.

3 **CLAIM III: Violation Of The Unruh Act**

4 32. Based on the facts plead above and elsewhere herein this complaint and because  
5 Defendants violated the Civil Code § 51 by failing to comply with 42 United States Code §  
6 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and continue to knowingly  
7 discriminate against Plaintiff and persons similarly situated in violation of Civil Code §§ 51, 52,  
8 and 54.1. Plaintiff alleges the access violations alleged here are so obvious as to implicate at least  
9 a prima facie case of discriminatory intent.

10 33. Based on the facts plead above, Claims I, II, and III of Plaintiffs' Second Cause Of  
11 Action above, and the facts elsewhere herein this complaint, Plaintiff will suffer irreparable harm  
12 unless Defendants are ordered to remove architectural, non-architectural, and communication  
13 barriers at Defendants' public accommodation. Plaintiff alleges that Defendants' discriminatory  
14 conduct is capable of repetition, and this discriminatory repetition adversely impacts Plaintiff and  
15 a substantial segment of the disability community. Plaintiff alleges there is a state and national  
16 public interest in requiring accessibility in places of public accommodation. Plaintiff has no  
17 adequate remedy at law to redress the discriminatory conduct of Defendants. Plaintiff desires to  
18 return to Defendants' places of business in the immediate future. Accordingly, the Plaintiff  
19 alleges that a structural or mandatory injunction is necessary to enjoin compliance with state civil  
20 rights laws enacted for the benefit of individuals with disabilities.

21 34. Wherefore, Plaintiff prays for damages and relief as hereinafter stated.  
22  
23  
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26  
27  
28


## DEMAND FOR JUDGMENT FOR RELIEF:

- A. For injunctive relief pursuant to 42 U.S.C. § 12188(a).
- B. For general damages pursuant to Cal. Civil Code §§ 52 or 54.3;
- C. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for each and every offense of Civil Code § 51, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines (Codified in 28 C.F.R. Part 36, App. A);
- D. In the alternative to the damages pursuant to Cal. Civil Code § 52 in Paragraph C above, for \$1,000 in damages pursuant to Cal. Civil Code § 54.3 for each and every offense of Civil Code § 54.1, Title 24 of the California Building Code, ADA, and ADA Accessibility Guidelines;
- E. For treble damages pursuant to Cal. Civil Code §§ 52(a) or 54.3(a);
- F. For attorneys fees pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 12205, and Cal. Civil Code § 52; 54.3;
- G. A Jury Trial and;
- H. For such other further relief as the court deems proper.

Respectfully submitted:

Dated: May 19, 2008

**PINNOCK & WAKEFIELD, A.P.C.**

By:   
THEODORE A. PINNOCK, ESQ.  
DAVID C. WAKEFIELD, ESQ.  
Attorneys for Plaintiff

Noni Gotti v. Guillermo Benitez, et al.  
USDC, Southern District of California

## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On July 11, 2008, I served the within documents:

### NOTICE OF REMOVAL OF ACTION; CIVIL COVER SHEET

- ☐ by transmitting via facsimile number (619) 235-0398 the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ by placing the document(s) listed above in a sealed overnight envelope and depositing it for overnight delivery at San Diego, California, addressed as set forth below. I am readily familiar with the practice of this firm for collection and processing of correspondence for processing by overnight mail. Pursuant to this practice, correspondence would be deposited in the overnight box located at 530 "B" Street, San Diego, California 92101 in the ordinary course of business on the date of this declaration.
- ☐ by personally delivering via Knox Attorney Service the document(s) listed above to the person(s) at the address(es) set forth below.

Theodore A. Pinnock, Esq.  
David C. Wakefield, Esq.  
Michelle Wakefield, Esq.  
3033 Fifth Avenue, Suite 410  
San Diego, CA 92103

*Attorney for Plaintiff*  
*Noni Gotti*

- ☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 11, 2008, at San Diego, California.

  
Katy E. Mazzei



**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 152924 - TC  
\* \* C O P Y \* \*  
July 11, 2008  
15:05:28**

**Civ Fil Non-Pris**

USAO #: 08CV1245J  
Amount.: \$350.00 CK  
Check#: BC2172

**Civ Fil Non-Pris**

USAO #: 08CV1245W  
Amount.: \$350.00 CK  
Check#: 1

**Civ Fil Non-Pris**

USAO #: 08CV1247  
Amount.: \$350.00 CK  
Check#: 1

**Civ Fil Non-Pris**

USAO #: 08CV1248  
Amount.: \$350.00 CK  
Check#: 1

**Civ Fil Non-Pris**

USAO #: 08CV1250  
Amount.: \$350.00 CK  
Check#: 1

**Civ Fil Non-Pris**

USAO #: 08CV1251  
Amount.: \$350.00 CK  
Check#: 1

**Total-> \$2,100.00**

**FROM: CIVIL FILINGS**

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Noni Gotti

**DEFENDANTS**

Guillermo Benitez; Elizabeth Benitez Garcia dba San Ysidro Auto Sales

**FILED**

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego

(08 JUL 11 PM 2:51)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) CLERK, U.S. DISTRICT COURT  
Southern District of California  
Spencer C. Skeen (Bar No. 182216)

Procopio Cory Hargreaves &amp; Savitch LLP

530 B Street, Suite 2100

San Diego, California 92101

Tel: (619) 238-1900

08 CV 1245 J POR  
DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)

Theodore A. Pinnock (Bar No. 153434)

Pinnock &amp; Wakefield, APC

3033 Fifth Avenue, Suite 410

San Diego, California 92103

Tel: (619) 858-3671

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 United States Code Sections 12182 and 12183

Brief description of cause:

Americans with Disabilities Act

**VII. REQUESTED IN COMPLAINT:**

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
DEMAND \$ Not specified  
CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
July 11, 2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 152924 AMOUNT \$ 350 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_  
7/11/08

American LegalNet, Inc.  
www.FormsWorkflow.com